## CHEW JIAN YAW v. PP

HIGH COURT MALAYA, KUALA LUMPUR
NOORIN BADARUDDIN J
[CRIMINAL APPEAL NO: WA-42(ORS)-1-02-2023]
5 JUNE 2024

**Abstract** – *The seizure of a property under s. 25(1) of the Dangerous Drugs (Forfeiture of Property) Act 1988 ('Act') premised on a reasonable suspicion that the property is the subject matter of an offence under the Act or which has been used for the commission of that offence, or illegal property, cannot stand if the applicant has been discharged and acquitted from the charge under s. 39B of the Dangerous Drugs Act 1952 ('DDA'). When an applicant has satisfied the element that no offence under the Act or the DDA has been committed in respect of the property that is being claimed by the applicant, on a balance of probabilities and in such situation, the property ought to be released to the applicant.*

***CRIMINAL PROCEDURE:*** *Forfeiture – Dangerous drugs – Seizure of properties – Whether properties constituted illegal properties under Dangerous Drugs (Forfeiture of Property) Act 1988 ('Act') – Application under s. 32(2) of the Act for seized properties to be released – Whether applicant lawfully entitled to properties – Whether evidence in relation to monies/property being illegal proceeds purely based on presumption and suspicion – Whether appellant discharged and acquitted from charge under s. 39B of Dangerous Drugs Act 1952 – Whether applicant adduced sufficient credible evidence that properties acquired through lawful means – Whether properties ought to be released to applicant*

The appellant was arrested for being involved in trafficking in dangerous drugs under s. 39B of the Dangerous Drugs Act 1952 ('DDA') which led to the seizure of certain properties belonging to the appellant under s. 25(1) of the Dangerous Drugs (Forfeiture of Property) Act 1988 ('Act'). It was the police's case that they had reason to believe that the properties constituted illegal properties under the Act. An application was then made by four applicants including the appellant herein under s. 32(2) of the Act for the seized properties to be released on the ground that they were lawfully entitled to the said properties. Pursuant to s. 32(3) of the Act, the Sessions Court made various rulings in regards to the seized properties and one of the properties marked as EU28 ('E28/the property') in the form of monies, the amount of which was RM604,270 in the CIMB account belonging to the appellant herein was ordered to be forfeited to the Government of Malaysia and hence, this appeal. It was the appellant's contentions that: (i) the appellant succeeded in proving that the property was not illegal property on

A a balance of probabilities; and (ii) the Sessions Court Judge ('SCJ') erred in finding that the property was illegal property premised on presumption and suspicion without proof. Summarily, the respondent contended that the appellant failed to proffer sufficient evidence to prove that the property was obtained legally or from a legal source and as such the appellant had failed
B to prove that he was entitled to the property.

**Held (allowing appeal):**

**(1)** Upon reading the evidence of the investigating officer, SR1, three reasons that could be summarised as to why the police had seized the
C property were *ie*; (i) the money in the appellant's CIMB account/E28/ the property was said to be a large sum of money; (ii) the transactions reflected in the account were suspected to be related to illegal activity; and (iii) that the appellant was charged with an offence under s.39B of the DDA. In support, the police relied on the appellant's account statement from CIMB bank ('R36 a-b') and criminal records of three
D individuals who had transacted with the appellant. Apparently, the three individuals were also arrested for drug offences. The SCJ for that matter found that the property was proceeds from illegal activities and relied solely on SR1's evidence. However, no evidence was adduced as to how the monies reflected in R36 a-b/E38 and the transactions (money
E credited into the appellant's CIMB account/E38) with the three individuals were said to be illegal transactions or proceeds from illegal activities. (paras 12-16)

**(2)** The evidence led by the respondent in relation to the monies/the property being illegal proceeds were purely based on presumption and
F suspicion which became the basis of the ruling made by the SCJ. Except for the fact that the three individuals were said to be charged with drugs offences based on the criminal records obtained by SR1, SR1 for that matter could not confirm whether the three individuals were convicted for any drug offences. So long as the three individuals have not been
G found guilty for any offence under the DDA, the monies that they have credited into the appellant's account could not be said to be related to illegal activities or proceeds. The criminal record of the three individuals alone was not conclusive evidence that the money they had credited into the appellant's CIMB account were illegal monies or
H proceeds from drugs or any other illegal activities. Further, it was uncontroverted that the appellant was discharged and acquitted from the charge under s. 39B of the DDA on 19 December 2023. (para 16)

**(3)** Therefore, the seizure of the property under s. 25(1) of the Act premised on reasonable suspicion that the property was the subject matter of an
I offence under the Act or which had been used for the commission of that offence, or illegal property, could no longer stand because the appellant had satisfied the element that no offence under the Act or the DDA having been committed in respect of the said property that was being

claimed by the appellant, on a balance of probabilities. If the appellant was found not guilty for the offence under s. 39B of the DDA, the property must be released to the appellant. (para 17)

**(4)** The only burden on the appellant was to adduce sufficient credible evidence that the property was acquired by him through lawful means and that he was entitled to the same. It was the appellant's evidence that he and SP3 were partners in a company operating as fruits suppliers and another company operating in the area of construction. The appellant was paid a monthly salary and director's fees and also received bonuses which were distributed according to the profit gained from their business. SP4, the company's certified professional account, confirmed the appellant's position as director and shareholder of the companies. The appellant further provided his tax assessments for the year 2016 to 2020 which showed that the appellant had made declarations of income received to the Inland Revenue. The SCJ had completely ignored and failed to address and evaluate the documentary evidence produced by the appellant and the oral testimonies of SP3 and SP4, which were consistent and supported the appellant's position. With these evidence accorded with the probabilities of the appellant's case, it was a serious misdirection for the SCJ to give such evidence little or no weight at all. (paras 18-28)

**(5)** The appellant's burden was only to prove that he had income earned and the monies received were legal. There could not be a burden on him to explain each and every transaction in E28 when the SCJ had completely ignored the gains that could be reasonably obtained by the appellant through shrewd and careful investments of his employment and partnership income and his other legitimate sources of income. The SCJ further failed to state whether the appellant had failed to discharge his burden on a balance of probabilities. In light of the evaluation and findings made by the SCJ, which were premised primarily on suspicion, the failure on the part of the SCJ to specifically make a finding that the appellant had failed to discharge his burden on a balance of probabilities was a misdirection. (paras 29 & 30)

**(6)** Based on the entire evidence adduced before the Sessions Court, and in light of the presumption of illegality against the property did not apply, there was no sufficient evidence to show that the property/E28 was illegal. The appellant succeeded in proving that the property was not illegal property, on a balance of probabilities, and that he was legally entitled thereto. The order made by the SCJ in regards to the property was set aside. The property/E28 was ordered to be released to the appellant. (paras 31 & 32)

**Case(s) referred to:**

*Jason Chan Huan Sen & Ors v. PP [2015] 2 CLJ 605 CA* ***(refd)***

*PP v. Lim Kim Hoei & Anor [2014] 4 CLJ 816 CA* ***(refd)***

**Legislation referred to:**
Dangerous Drugs (Forfeiture of Property) Act 1988, ss. 25(1), 32(2), (3)
Dangerous Drugs Act 1952, s. 39B
Limited Liability Partnerships Act 2012, s. 9

*For the appellant - Shah Rizal Abdul Manan; M/s Shah & Hurrie*
*For the prosecution - Noorhani Muhmmed Ayub & Nik Mohd Fadli Nik Azlan; DPP*

*Reported by Suhainah Wahiduddin*

## JUDGMENT

**Noorin Badaruddin J:**

**[1]** The appellant was arrested on 27 June 2020 for being involved in trafficking in dangerous drugs under s. 39B of the Dangerous Drugs Act 1952 ("DDA") which led to the seizure of certain properties belonging to the appellant under s. 25(1) of the Dangerous Drugs (Forfeiture of Property) Act 1988 ("the Act"). It is the police's case that they had reason to believe that the properties constituted illegal properties under the Act.

**[2]** An application was then made by four applicants including the appellant herein under s. 32(2) of the Act for the seized properties to be released on the ground that they were lawfully entitled to the said properties.

**[3]** Pursuant to s. 32(3) of the Act, the Sessions Court made various rulings in regards to the seized properties and one of the properties marked as E28 ('E28/the property') in the form of monies, the amount of which was RM604,270 in the CIMB account belonging the appellant herein was ordered to be forfeited to the Government of Malaysia and hence this appeal.

**Summary Of The Appellant's Contentions**

**[4]** Summarily, it is the appellant's contentions that:

(i) the appellant succeeded in proving that the property is not illegal property on balance of probabilities; and

(ii) the learned Sessions Judge erred in finding that the property is illegal property premised on presumption and suspicion without proof.

**Summary Of The Respondent's Contention**

**[5]** Summarily, the respondent contends that the appellant has failed to proffer sufficient evidence to prove that the property was obtained legally or from a legal source and as such the appellant had failed to prove that he is entitled to the property.

**Findings**

**[6]** The appellant filed the present application before the Sessions Court under s. 32(2) of the Act which states:

Forfeiture of property seized under this Act where there is no prosecution, or no proceedings under Part III or no claim thereto

32.(1) Where any property has been seized under this Act, other than under or by virtue of Part VII, and:

(a) no prosecution for any offence under any law is instituted with regard to such property;

(b) no proceedings are commenced by the Public Prosecutor for the forfeiture of such property under Part III; and (c) no claim in writing is made by any person that he is lawfully entitled to such property and that it is not liable to forfeiture under this Act or under the Dangerous Drugs Act 1952, within three months from the date of its seizure, the property shall become forfeited immediately upon the expiration of the said period of three months.

(2) Where within three months from the date of the seizure of any property under this Act, *a claim in writing is made thereto by any person in the terms mentioned in paragraph (1)(c), the Public Prosecutor shall within fourteen days after the expiry of the said period of three months, refer such claim to a Sessions Court for its decision*.

(emphasis added)

**[7]** In determining the application made under s. 32(2) of the Act, the court must adhere to the provision of sub-s. 32(3) wherein:

(3) The Sessions Court to which a claim is referred under subsection (2) shall issue a summons requiring the person claiming that he is lawfully entitled to the property, and the person from whom it was seized, if he and his whereabouts are known, to appear before the court and upon such appearance or in default of such appearance, upon due service of such summons being proved, *the Sessions Court shall proceed to the examination of the matter and if satisfied that no offence under this Act or under the Dangerous Drugs Act 1952 has been committed in respect of the property claimed and that such property is not illegal property, shall order the same to be released to the person claiming the same upon proof that he is lawfully entitled thereto, and shall, in any other case, order the property to be forfeited*.

(emphasis added)

**[8]** It is trite law that as claimant to the property, the appellant will have to prove his claim on balance of probabilities (see: *Jason Chan Huan Sen & Ors v. PP* [2015] 2 CLJ 605; *PP v. Lim Kim Hoei & Anor* [2014] 4 CLJ 816).

**[9]** It is pertinent to note that in *Jason Chan Huan Sen & Ors* (*supra*), the Court of Appeal by majority had elaborated and stated that the presumptive provision of illegal property under s. 35 of the Act would not extend to the realm of a proceeding undertaken under s. 32(3) of the Act. The majority decision in that case preferred the view of the same court in *Lim Kim Hoei & Anor* (*supra*). The court, by majority through the judgment of Abang Iskandar JCA (as His Lordship then was), went on to state:

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> [83] ... we are in agreement with the learned counsel for the appellants in that the presumption of illegality against the property does not apply against a seized property which a claimant seeks to be released to him under s. 32(3) of the FOP Act, as being the lawful owner of that property. Proceedings under s. 32(3) comes under a specific regime under the FOP Act to which the presumption of illegal property under s. 35 does not apply.

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**[10]** Therefore, in light of the presumption of illegal property under s. 35 of the Act does not apply, the elements which the court will have to determine and for the appellant to prove on balance of probabilities are whether the property in question herein is not illegal property and that the

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appellant is lawfully entitled thereto.

**[11]** Apart from the two elements stated in the above, firstly, it must be shown or proved that no offence under the Act or the DDA has been committed in respect to the property. This is what the Court of Appeal has

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stated in *Jason Chan Huan Sen & Ors* (*supra*):

> [76] *As to the requirements to satisfy the examining court regarding the elements that there was no offence under the FOP Act or the Dangerous Drugs Act 1952 having been committed in respect of the said property that is being claimed and that such property is not illegal property, such evidence must come from the investigating officer as he is the person in possession of the required information and knowledge about*

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> *those issues.*
>
> (emphasis added)

**[12]** The investigating officer, SR1, in cross-examination at vol. 2 p. 144 of the appeal record agreed that his decision to seize the property was based on suspicion that the property was obtained illegally. SR1 stated as follows:

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S25: Tuan sita harta Penuntut ini hanya semata-mata kerana Tuan syak saje yang harta ni datang dari aktiviti yang menyalahi undang-undang sebab dia kena tangkap bawah 39B, betul tak?

J25: Betul Yang Arif

G

S26: Saya kata kan, kalau Tuan betul-betul pasti bahawa sumber harta ini datangnya dari aktiviti pengedaran atau illegal, perkara ini akan dibawa terus ke Mahkamah Tinggi untuk 1 prosedur lain, setuju dengan saya?

J26: Tidak setuju

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S27: Kalau Tuan betul-betul pasti bahawa sumber harta ini datangnya dari aktiviti menyalahi undang-undang, prosiding perlucuthakan di bawah seksyen 8 yang sepatutnya dijalankan dan bukannya seksyen 32, setuju dengan saya?

J27: Tidak setuju, Yang Arif

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S28: *Dan asas kepada siasatan Tuan saya katakan hanya kerana Tuan syak sahaja harta ini diperoleh dari sumber yang menyalahi undang- undang, setuju dengan saya?*

J28: *Setuju, Yang Arif*

S29: *Walaupun setakat hari ini belum ada apa-apa lagi dapatan yang menjurus kepada sebarang aktiviti yang menyalahi undang-undang, setuju tak dengan saya?*

J29: *Setuju Yang Arif*

PB P2: Sebab Penuntut ni pun belum dibicarakan lagi untuk kes 39B tu (emphasis added)

**[13]** Upon further reading of SR1's evidence, three reasons can be summarised as to why the police seized the property, *ie*;

(i) the money in the appellant's CIMB account/E28/the property was said to be a large sum of money;

(ii) the transactions reflected in the account were suspected to be related to illegal activity; and

(iii) that the appellant was charged with an offence under s. 39B of the DDA.

**[14]** In support, the police relied on the appellant's account statement from CIMB Bank ("R36 a-b") and criminal records of three individuals who had transacted with the appellant as reflected in R36 a-b in E28. Apparently, the 3 individuals were also arrested for drugs offences.

**[15]** The learned Sessions Judge for that matter found that the property was proceed from illegal activities and relied solely on SRTs evidence. The learned Sessions Judge found as follows:

[29] Memandangkan beban pembuktian adalah di bahu SP2 (the appellant) sebagaimana dinyatakan dalam perenggan 26 di atas, beliau telah mengemukakan penyata-penyata cukai pendapatannya bagi tahun taksiran 2016 [Eksibit P17], 2017 [Eksibit P5], 2018 [Eksibit P6], 2019 [Eksibit P18] dan 2020 [Eksibit P7] serta empat keping gambar dua (2) Kedai Buah-Buahan SP2 bersama dengan rakan kongsinya. SP3 [Eksibit P19 (A-D)] bagi membuktikan sumber pendapatan beliau.

[30] SP2 juga telah mengemukakan SP3 dan SP4 sebagai saksi-saksi beliau bagi menyokong tuntutan beliau mengenai harta E28 tersebut yang mana SP4 telah mengemukakan Summary of Salary SP2 dalam Goldsuncity KL PLT [Eksibit P12].

[31] Dalam hal ini, SP2 hendaklah membuktikan sumber kewangan beliau dengan pasti dan jelas dengan menunjukkan money trail yang jelas dan terperinci bagi setiap transaksi yang dibuat dalam akaun CIMB harta E28 tersebut namun SP2 tidak mengemukakan sebarang bukti dokumentari mahupun mengemukakan saksi tentang pelaburannya dalam Pusat Hiburan Seduce KL bagi menyokong tuntutan beliau sebagaiamana dalam perenggan 17 PSP2 beliau.

[32] Walau apapun SR1 telah memberi keterangan semasa Pemeriksaan Utama bahawa berdasarkan hasil siasatan beliau, terdapat banyak transaksi dalam akaun harta E28 ini di antara SP2 dengan empat (4) orang

penama yang telah dituduh di mahkamah di bawah seksyen 39B Akta Dadah Berbahaya 1952 [Akta 234] kerana disyaki terlibat dengan kegiatan pengedaran dadah. Empat (4) orang penama itu adalah Penuntut Pertama dan 3 orang penama lain yang dinyatakan dalam Semakan Rekod Kesalahan Jenayah daripada Sistem Rekod Jenayah (PDRM) [Eksibit R37 (A-C)]. Ketiga-tiga penama dalam Eksibit R37 (A-C) adalah seperti berikut:

(a) Khor Lip Peng [Eksibit R37 (A)]

(b) Lim Swee Heng [Eksibit R37 (B)]; dan

(c) Huan Chee Wei [Eksibit R37 (C)]

[33] Setelah meneliti penyata akaun CIMB tersebut [Eksibit R36(A)], Mahkamah ini mendapati adalah benar terdapat banyak transaksi wang masuk di antara SP2 dengan keempat-empat penama tersebut dan 3 transaksi wang dikeluarkan namun SP2 tidak menjelaskan apakah hubungan beliau dengan Penuntut Pertama dan ketiga-tiga penama dalam Eksibit R37 (A-C) dan alasan mengapa Penuntut Pertama dan ketiga-tiga penama ada memasukkan wang dalam jumiah yang banyak ke dalam akaun CIMB harta E28 SP2. Terdapat juga wang harta E28 yang dimasukkan melalui cash deposit machine (selepas ini dirujuk sebagai 'CDM') dan MEPS funds transfer (selepas ini dirujuk sebagai 'ATM') yang berkemungkinan adalah hasil kegiatan pengedaran dadah. SP2 langsung tidak menerangkan alasan mengapa setiap transaksi wang masuk melalui CDM dan ATM tersebut. Senarai transaksi wang keluar masuk dalam harta E28 ini adalah seperti dalam Jadual di bawah:

...

[34] Tambahan lagi, SR1 semasa Pemeriksaan Utama telah memberi keterangan sebagaimana berikut:

> S31: Baik. Itu sahaja untuk penyata Akaun DSP. Soalan mengenai penyata akaun, DSP, melalui siasatan DSP sendiri di dalam akaun-akaun Penuntut ini, apa yang menyebabkan DSP sita akaun, wang dalam akaun ini di mana-mana akaun di dalam di hadapan DSP?
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> J31: Baik Yang Arif. *Pertama adalah kerana jumlah wang yang begitu banyak milik Penuntut yang menimbulkan syak yang munasabah bahawa ianya adalah hasil daripada aktiviti larangan dan yang kedua, dalam siasatan saya terhadap akaun CIMB iaitu eksibit E28 terdapat transaksi yang mencurigakan yang mana ada nama-nama suspek yang pernah terlibat dalam kes pengedaran dadah termasuk dalam transaksi akaun tersebut*.

...

[35] Berdasarkan keterangan SR1 dalam perenggan 34 di atas, Mahkamah ini mendapati memang benar terdapat transaksi wang masuk dalam penyata akaun CIMB tersebut [Eksibit R36(A)] selepas Perintah Kawalan Pergerakan MCO diisytiharkan oleh Kerajaan Malaysia mulai 18 Mac 2020 atas penularan COVID-19 sedangkan kesemua premis perniagaan

adalah diarahkan tutup oleh Kerajaan Malaysia. Larangan berniaga secara fizikal oleh Kerajaan Malaysia telah dinyatakan dalam Peraturan-Peraturan Pencegahan dan Pengawalan Penyakit Berjangkit ...

[36] Setelah meneliti setiap transaksi-transaksi tersebut, Mahkamah ini mengambil pendekatan dan berpuas hati bahawa transaksi-transaksi yang melibatkan Penuntut Pertama dan ketiga-tiga penama dalam Eksibit R37 (A-C) dan wang harta E28 yang dimasukkan melalui CDM serta ATM hendaklah dilucuthak kepada Kerajaan Malaysia sebanyak RM604,270.00 kerana SP2 hendaklah membuktikan sumber kewangan beliau dengan pasti dan jelas dengan menunjukkan money trail yang jelas dan terperinci bagi setiap transaksi yang dibuat dalam akaun CIMB harta E28 tersebut namun malangnya perkara sedemikian tidak dilakukan oleh SP2.

(emphasis added)

**[16]** However, no evidence was adduced as to how the monies reflected in R36 a-b/E38 and the transactions (money credited into the appellant's CIMB account/E38) with the three individuals were said to be illegal transactions or proceeds from illegal activities. On perusal of the entire proceedings before the Sessions Court, this court finds that the evidence led by the respondent in relation to the monies/the property being illegal proceeds were purely based on presumption and suspicion which became the basis of the ruling made by the learned Sessions Judge. Except for the fact that the three individuals were said to be charged with drugs offences based on the criminal records obtained by SR1, SR1 for that matter could not confirm whether the three individuals were convicted for any drugs offences. So long as the three individuals have not been found guilty for any offence under the DDA, the monies that they have credited into the appellant's account cannot be said to be related to illegal activities or proceeds. SR1 agreed that the criminal record of the three individuals alone was not conclusive evidence that the money they had credited into the appellant's CIMB account are illegal monies or proceeds from drug or any other illegal activities. Further and in regards to the appellant, it was uncontroverted that the appellant was discharged and acquitted from the charge under s. 39B of the DDA on 19 December 2023.

**[17]** Therefore, this court finds the seizure of the property under s. 25(1) of the Act premised on reasonable suspicion that the property is the subject matter of an offence under the Act or which has been used for the commission of that offence, or illegal property, could no longer stand because the appellant has satisfied the element that no offence under the Act or the DDA having been committed in respect of the said property that is being claimed by the appellant, on balance of probabilities. SR1 for that matter had testified in cross-examination (appeal record vol. 2 p. 145) that if the appellant is found not guilty for the offence under s. 39B of the DDA, the property must be released to the appellant.

**[18]** Secondly and as to the elements whether the property in question herein is not illegal property and that the appellant is lawfully entitled thereto, the only burden on the appellant is to adduce sufficient credible evidence that the property was acquired by him through lawful means and that he is entitled to the same.

**[19]** The learned Sessions Judge in her judgment had stated that the appellant must prove that his source of income was not illegal by showing a detailed money trail of each transaction in E28. This court agrees with the learned counsel's submission that the learned Sessions Judge is putting the burden of proving beyond reasonable doubt when the burden on the appellant is on balance of probabilities. The appellant only needs to adduce sufficient credible evidence that the property was acquired by him through lawful means and that he was entitled to the property (see: *PP v. Lim Kim Hoei & Anor* (*supra*)).

**[20]** The appellant had testified in court and gave his evidence supported by documentary evidence. His evidence was further corroborated by two witnesses, SP3 his business partner and SP4 the accountant who managed the appellant's company's account.

**[21]** It was the appellant's evidence and SP3 that they were partners in the company called Goldsuncity (KL) PLT (No. Pendaftaran: LLP0015304-GN) operating as fruits supplier at two branches in USJ Taipan and Setia Alam, Selangor. According to SP3, the appellant was managing the two branches and was paid RM15,000 per month as his salary and as director's fees before he was arrested. The appellant received bonuses which were distributed according to the profit gained from their business. SP3 testified that for their business, transactions were done mostly in the form of cash for easy capital rolling purposes to pay their suppliers.

**[22]** The appellant adduced the annual account statement of his company which was registered as limited liability partnership with the Companies Commission of Malaysia ("CCM") Although there was no agreement between the appellant and SP3 relating to the partnership, it must be noted that it cannot be gainsaid that the company does not exist because Limited Liability Partnership (LLP) is an alternative business vehicle regulated under the Limited Liability Partnerships Act 2012 which combines the characteristics of a company and a conventional partnership and under s. 9 of the Limited Liability Partnerships Act 2012 a written agreement of such partnership is not a requirement.

**[23]** The appellant further provided photographs of the two branches of shops in USJ and Setia Alam which further proved that the company and the business existed and were in operation before the appellant's arrest. P13 and P16 being the company's statement of accounts for the years 2018 to 2021 were also produced by the appellant.

**[24]** At the time the appellant was arrested on 27 June 2020, it was in evidence that both the shops were still operating and managed by the appellant's sister and in 2021 the business/shop were changed to convenience store.

**[25]** Apart from the Goldsuncity (KL) PLT, the appellant together with SP3 were also partners in another company, Asia Prise Sdn Bhd (No. Pendaftaran: 1308068-H). The company is said to operate in the area of construction. This was supported by P10, the company's profile with the CCM which shows the appellant being one of the directors and P9 is the certificate of establishment of the company. According to SP3, the appellant had injected capital into the company's projects and the profits would be channelled to the appellant.

**[26]** The evidence stated in the above was supported by SP4, the company's certified professional accountant who confirmed the appellant's position as director and shareholder of the companies. SP4 further provided P12, being a "summary of salary" showing the salary earned by the appellant as a partner in Goldsuncity (KL) PLT.

**[27]** The appellant further provided P5, P7, P17 and P18 being his tax assessments for the year 2016 to 2020 which show that the appellant had made declaration of income received to the Inland Revenue.

**[28]** This court finds that the learned Sessions Judge had completely ignored and failed to address and evaluate the documentary evidence produced by the appellant and the oral testimonies of SP3 and SP4. There were no reasons given as to why their evidence (SP3 and SP4) and the documentary evidence adduced cannot be accepted or that their evidence is not credible. The documentary evidence adduced by the appellant and the oral evidence by SP3 and SP4 were consistent and supported the appellant's position. When this evidence accord with the probabilities of the appellant's case, it is a serious misdirection for the learned Sessions Judge to give such evidence little or no weight at all.

**[29]** The learned Sessions Judge instead was insisting for the money trail of transactions in E28 to be produced and had accepted and relied only on the evidence of reasonable suspicion of SR1 relating to the property. At the risk of repetition, the appellant's burden was only to prove that he had income earned and the monies received were legal. There cannot be a burden on him to explain each and every transaction in E28 when the learned Sessions Judge had completely ignored the gains that could be reasonably be obtained by the appellant through shrewd and careful investments of his employment and partnership income and his other legitimate sources of income.

A **[30]** Pertinently, not only the learned Sessions Judge had failed to evaluate the documentary evidence adduced by the appellant and the oral testimonies of SP3 and SP4, the learned Sessions Judge further failed to state whether the appellant had failed to discharge his burden on balance of probabilities. It is of the considered view and in light of the evaluation and findings made by
B the learned Sessions Judge quoted in the above, which were premised primarily on suspicion, the failure on the part of the learned Sessions Judge to specifically make a finding that the appellant had failed to discharge his burden on balance of probabilities was a misdirection.

**[31]** Based on the entire evidence adduced before the Sessions Court, and
C in light of the presumption of illegality against the property does not apply, this court is satisfied that there were no sufficient evidence to show that the property/E28 is illegal. This court is further satisfied that the appellant succeeded in proving that the property is not illegal property on balance of probabilities and that he is legally entitled thereto.

D **Conclusion**

**[32]** In the upshot, this court allowed the appeal and set aside the order made by the learned Sessions Judge in regards to the property, E28. The property/E28 was ordered to be released to the appellant.

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